

June 24, 2005

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION**

SUBJECT: Department of Development and Environmental Services File No. **L03P0031**  
Proposed Ordinance No. **2005-0212**

**TUSCANY RIDGE**  
Preliminary Plat Application

Location: Northwest of the intersection of South Langston Road and  
76th Avenue South

Applicant: Mariann Danard  
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King County: Department of Development and Environmental Services (DDES),  
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**SUMMARY OF DECISION/RECOMMENDATIONS:**

Department's Preliminary Recommendation:

Department's Final Recommendation:

Examiner's Decision:

Approve with conditions

Approve with revised conditions

Approve with conditions as revised

**EXAMINER PROCEEDINGS:**

Hearing Opened:

Hearing Closed:

June 2, 2005

June 2, 2005

**FINDINGS, CONCLUSIONS & DECISION:** Having reviewed the record in this matter, the Examiner now makes and enters the following:

## 1. General Information:

Application Completeness Date: December 30, 2003

2. Except as modified herein, the facts set forth in the DDES reports to the Examiner and the DDES and King County Department of Transportation testimony are found to be correct and are incorporated herein by reference.
3. Applicant Mdanard Group, Inc., requests preliminary plat approval for a subdivision of 6.12 acres into 54 lots for detached single-family dwellings. The proposed density is 9 dwelling units per acre, achieving the maximum density permitted in the applicable R-6 zone by utilizing the Transfer of Development Rights (TDR) program authorized under the County's development regulations. [KCC 21A.12.030(A)(B)(1) and Chapter 21A.37 KCC] The lot sizes range from approximately 2,500 square feet to 5,000 square feet, except for Lot 36, which is proposed to be approximately 11,000 square feet. The site topography consists of a steep southerly drop from the property's northern boundary (which fronts the south side of South 129th Street) and then forming a less steep bench before descending further south and east to a lower benched area on the east portion of the property's southern frontage (on the north side of South Langston Road).

4. The development area will avoid the steeply sloped northern portions dropping from South 129th Street and will array the lots around a series of cul-de-sacs and a short loop road off of the northern cul-de-sac. A few lots will be accessed via short access tract stub roads. The main access entry of the site will be via an intersection with South Langston Road in the western part of the frontage, with a public access road running roughly due north before curving slightly northeast to terminate in the northerly cul-de-sac; the other cul-de-sacs and access tracts would branch from this main entry. The cul-de-sac in the southwest will be a private cul-de-sac while the cul-de-sac in the southeast will be a public road. No direct access would be taken from 76th Avenue South on the property's east boundary. Two open space and recreation tracts will be developed with the subdivision, one in the north central portion surrounded by the aforementioned loop access tract off the main cul-de-sac, and the other in the southeastern portion in the corner of South Langston Road and 76th Avenue South (in part covering an underground drainage detention vault in that area). Fencing will be employed on the road frontages of the recreation tracts for child safety.
5. The proposed density of development and lot sizes conform to the County's development regulations.
  - A. The nominal base density of the R-6 zone, which was applied to the property in 1995, is six dwelling units per acre. King County Code permits a form of bonus increase of that density over the base to the maximum stated density permitted of nine dwelling units per acre, predicated on certain independent threshold factors. One of those optional development factors is the one employed here, the TDR benefit conferred by KCC 21A.12.030(A)(B)(1) in concert with Chapter 21A.37 KCC (the TDR program provisions).
  - B. There are no qualitative criteria for use of the TDR program to achieve the 9 du/ac density on the subject property: not compatibility, and not neighborhood character issues. This is a classic case of infill density of development based on newly available sanitary sewer service within a long-established lower density neighborhood<sup>1</sup> which developed without sewer (and therefore had relatively low density at least in part because of the need for soil percolation and compliance with applicable health regulations, which often mandated larger lot sizes for adequate sanitation). But it is an inescapable fact that the area is within the greater Urban Growth Area (UGA), one of the ramifications of the Growth Management Act (GMA). How the density permissibilities and zoning have been decided to implement the GMA is not a matter under the Examiner's authority in deciding the subdivision application. That is a legislative matter under the County Council's domain. (Though it is surely of small comfort to many of the concerned neighbors, it should be noted that the property immediately to the south of the subject property across South Langston Road is zoned R-8, which allows a base density of 8 du/ac, fairly similar to that proposed here, and a maximum conceivable density achievable of 12 du/ac.)<sup>2</sup>

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<sup>1</sup> The lower density has been enjoyed by the neighborhood's residents, even leading to their considering the area not urban, but even "rural," or at least large lot suburban in character. That enjoyment presents the classic confrontation with higher density development utilizing sanitary sewer and required to provide minimum urban densities within the UGA.

<sup>2</sup> In certain cases, the maximum density may be exceeded for qualifying developments under other aspects of County code [see KCC 21A.34.040], but that is not being considered here in this proposal.

- C. The County land use regulations unmistakably permit the utilization of the TDR bonus in this case to gain maximum density; the Examiner has no discretion to disallow it based on neighborhood dislike (or even to require the property's preservation as open space, as some desire). The complaint of the inappropriateness of utilizing the TDR process in this case and the maximum density achievable under the applied R-6 zoning is a complaint the Examiner cannot consider.<sup>3</sup>
  - D. The claim that the proposed development is not in conformity with an alleged but unidentified "urban plan" for the area is not supported by any evidence of such a plan, nor of its preemption of the R-6 zoning and the density bonuses permitted in this case by the TDR program.
  - E. Under King County Code, actual minimum lot sizes are flexible within certain parameters and are not directly proportional to the zoning ranges; it is the total lot yield which is governed by the zoning. The lot sizes proposed are in general fully permissible, with the caveat DDES has noted that some lots (particularly Lots 32-35) may be marginal in their ability to meet minimum "buildable area" requirements. DDES has recommended an appropriate condition of approval, which the applicant acknowledges and accepts and is incorporated by the Examiner herein, which will address the review of that situation for full compliance prior to final plat approval.
6. The internal road layout has met review approval by DDES and the King County Department of Transportation (KCDOT). KCDOT has deemed the internal roadway design, which it acknowledges as innovative to deal with the site topography, as not inherently unsafe. Some concern is expressed by neighbors regarding the capacity of the internal roadways to accommodate on-street parking (and therefore cause spillover onto neighborhood streets), but the Examiner has no authority in the review of a standard subdivision to address parking issues; off-street parking will be required for each residence under the provisions of the County's development regulations at building permit review.
7. The development will install frontage improvements on South Langston Road, including curb, gutter and sidewalk on the property frontage. On 76th Avenue South, the development will install similar frontage improvements as well as a delineated right-turn lane for southbound traffic turning right onto South Langston Road. The South Langston Road/76th Avenue South intersection will also be partly improved in its physical geometry to provide a proper landing grade; its existing slightly-angled intersection alignment will continue as is, however, as approved by the County Road Engineer under a standards variance. Part of the consideration of the granting of that variance was the intersection's favorable Level of Service (LOS), LOS A, the least congested classification. A sag vertical curve (a dip in layman's terms) on South Langston

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<sup>3</sup> One of the legal premises underlying the land use planning and regulatory system in Washington State is that decisions on individual applications must be based upon adopted ordinances and policies rather than upon the personal preferences or general fears of those who may currently live in the neighborhood of the property under consideration. [*Department of Corrections v. Kennewick*, 86 Wn. App. 521, 937 P.2d 1119 (1997); *Indian Trail Prop. Ass'n. v. Spokane*, 76 Wn. App. 430, 439, 886 P.2d 209 (1994); *Maranatha Mining v. Pierce County*, 59 Wn. App. 795, 805, 801 P.2d. 985 (1990); *Woodcrest Investments v. Skagit County*, 39 Wn. App. 622, 628, 694 P.2d 705 (1985)] The evaluation of the application must therefore be based upon officially adopted county ordinances, plans and policies, and state law, as well as legally accepted principles. And the legislative wisdom of state and county lawmakers must be respected "as is" in deciding the application, since policy decisions are the province of the legislative branch. A quasi-judicial decisionmaker cannot substitute the decisionmaker's judgment for that of the legislative body "with respect to the wisdom and necessity of a regulation." [*Cazzanigi v. General Electric Credit*, 132 Wn. 2d 433, 449, 938 P.2d 819 (1997); *Rental Owners v. Thurston County*, 85 Wn. App. 171, 186-87, 931 P.2d 208 (1997)]

Road will be made safer by the installation of a streetlight.

8. Certain concerned residents of the area desire additional traffic controls (a 4-way stop or a signal) installed at the 76th Avenue South/South Langston Road intersection, citing speeding traffic and the prevalence of near-miss traffic mishaps. However, the traffic analysis for the project<sup>4</sup> shows that with the project traffic, appropriate inclusion of background traffic and other known development projects, the intersection is nowhere close to deteriorating to an unacceptable LOS, even with the additional inclusion in the traffic growth of an allegedly-overlooked 144-dwelling unit project to the west on Martin Luther King Way.<sup>5</sup> The intersection is simply not congested enough, and will not be anywhere close to becoming congested enough by project completion, to warrant the imposition of traffic impact mitigation at that location. (It should be noted that during the peak hour the project will add approximately one peak hour trip every two minutes to the intersection, hardly adding significant congestion.) The South Langston Road/76th Avenue South intersection is also well below the threshold of accident occurrence to justify even any additional accident analysis, much less to require mitigation improvements.
9. There is a High Accident Location (HAL) nearby at the intersection of south 132nd Street/80th Avenue South/South Langston Road to the east, but that location is the beneficiary of a pending roundabout improvement which is funded and on the Capital Improvement Program (CIP) list and therefore no mitigation of the intersection is required of this development.
10. KCDOT is not shown to be in clear error in its review of the traffic analysis and its recommendation of mitigation conditions under County code. The Examiner grants deference to KCDOT's professional analysis and conclusions regarding conformity of the project with the County's traffic impact mitigation requirements. [*Mall, Inc. v. Seattle*, 108 Wn.2d 369, 739 P.2d 668 (1987)] KCDOT has stated that it is continuously open to reviewing safety signage on the County road system; inquiries may be made to the Department for requests for installation of additional warning signage and to request further review for additional stop controls.
11. With regard to school pedestrian safe walking conditions, DDES has appropriately recommended a condition for the improvement of an easterly route toward Dimmitt Middle School for the use of middle school and high school students toward their school and bus route. The route to the east is the most direct and level route and leads to a signalized intersection for safe crossing of Renton Avenue South, an arterial. That sufficiently and most appropriately provides the school pedestrian safety mandated by RCW 58.17.110. Some concern is expressed that neighborhood high school students tend to walk northerly on 76th Avenue South uphill to a 7-11 store on Renton Avenue South rather than directly to school. The Examiner cannot require improvement of that route. Since it is not the direct route for school travel purposes, the pedestrian motivation to the 7-11 store is not school-related. Only the school pedestrian purpose may be used as the basis for imposing improvement requirements. Under legal principles of substantive due process, there must be a rational *nexus* (or linkage) and proportionality for the imposition of development conditions; here, the *nexus* does not exist for travel to the 7-11 store; that is a purely personal choice of high school students to engage in activity other than transporting themselves directly to their school, and they undertake responsibility for that which cannot be addressed by governmental imposition.

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<sup>4</sup> Claimed to be invalid as to its temporal applicability (or shelf life), which claim is unfounded; the traffic study is valid until December 2006.

<sup>5</sup> That development on Martin Luther King Way would contribute very little peak hour traffic to the South Langston Road/76th Avenue South intersection, and would have little effect on the congestion classification (the LOS) of the intersection.

12. Much concern is expressed about the drainage impacts of the development, with particular concern toward the ability of the downstream drainage system to accommodate additional development runoff. DDES's drainage examination has been thorough and extensive and the feasibility of the proposed development to comply with applicable County drainage regulations, particularly the Surface Water Design Manual, has been demonstrated in the record and will be assured via formal review of the construction plans prior to final plat approval. The Examiner finds no error in DDES's conclusions, and confers deference to its drainage analysis. [*Mall, Inc. v. Seattle*, above] The development meets the "appropriate provisions" test of RCW 58.17.110 for the provision of "drainage" facilities and measures.
13. Concern is also expressed regarding the existing water pressure in the neighborhood and the capacity of the Skyway Water and Sewer District to provide additional water service to new development. That issue is a matter under the District's authority; the District has certified to the availability of water service, and that is the test of sufficiency of preliminary plat approval under the "appropriate provisions" requirement.
14. In the late-1990s, the property was subjected to a hazardous materials site cleanup action performed by the US Army Corps of Engineers, which removed one to two feet of depth of the surface soils and some hazardous materials associated with the site's prior use as a greenhouse and nursery. The Corps certified the cleanup of the site. Concern is expressed that there may be remnant toxicities and problems; such concerns are sufficiently addressed by DDES's recommended conditions of approval regarding geotechnical review and analysis during project construction, design and monitoring. The issue is adequately addressed at the preliminary plat stage.<sup>6</sup>

#### CONCLUSIONS:

1. The proposed subdivision, as conditioned below, would conform to applicable land use controls. In particular, the proposed type of development and overall density are specifically permitted under the R-6 zone and the TDR allowances.
2. If approved subject to the conditions below, the proposed subdivision will make appropriate provisions for the topical items enumerated within RCW 58.17.110, and will serve the public health, safety and welfare, and the public use and interest.
3. The conditions for final plat approval set forth below are reasonable requirements and in the public interest.
4. The dedications of land or easements within and adjacent to the proposed plat, as shown on the revised preliminary plat submitted on May 11, 2005, or as required for final plat approval, are reasonable and necessary as a direct result of the development of this proposed plat, and are proportionate to the impacts of the development.

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<sup>6</sup> It should be noted that the Examiner has no State Environmental Policy Act (SEPA) authority in this consideration. There was no appeal of the Determination of Nonsignificance (DNS) issued by DDES and the Examiner also has no authority to address the concerns regarding hazardous materials under substantive SEPA authority, since no related impact is identified in the environmental documents issued under SEPA by the responsible official (DDES). In any case, the cleanup has been certified by the Federal agency responsible for the cleanup action.

## DECISION:

The preliminary plat of the *Tuscany Ridge* subdivision, as revised and received May 11, 2005, is approved subject to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the density requirements of the R-6 zone classification. All lots shall meet the minimum dimensional requirements of the R-6 zone classification and shall meet the KCC 21A. 12.100 (minimum 2500 sq. ft. construction area). No townhomes can be constructed on the lots as long as it uses the maximum density of the zone. A minor revision which does not result in substantial changes may be required to show that all lots identified are buildable and it may be approved at the discretion of the Department of Development and Environmental Services.
4. Prior to the final plat approval and recording, the applicant shall provide a valid Transfer of Development Right (TDR) Certificate approved by the King County Department of Natural Resources to place the **18** additional lots within the proposed development. The certificate must show the applicant as the lawful owner of the development rights.
5. The applicant must obtain final approval from the King County Health Department.
6. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
7. The applicant shall obtain documentation by the King County Fire Protection Engineer certifying compliance with the fire flow standards of Chapter 17.08 of the King County Code.
8. Final plat approval shall require full compliance with drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. The following conditions represent portions of the Code. Requirements shall apply to all plats. The following conditions specifically address drainage issues for this particular plat:
  - A. The stormwater detention facility shall be designed at a minimum to the Level 1 Flow Control and Basic Water Quality requirements in the 1998 King County Surface Water Design Manual (KCSWDM).
  - B. Drainage plans and analysis shall comply with the 1998 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
  - C. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.

- D. The following note shall be shown on the final recorded plat:

"All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # \_\_\_\_\_ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."

9. The following road improvements are required for this subdivision to be constructed according to the 1993 King County Road Standards:

- A. FRONTAGES: South Langston Road shall be improved to the Collector Arterial (urban) standard, 22-feet of paving (as measured from the centerline), concrete curb, gutter and sidewalk and a roadway illumination system designed to County Standards. 76th Avenue South shall be improved to the urban Neighborhood Collector standard, 18 feet of paving (as measured from the 'right-of-way centerline' – current 'west' right-of-way line for 76th Avenue South) concrete curb, gutter and sidewalk, and illumination, from the curb return on the NW quadrant of the intersection at Langston Road, northerly approximately 100 feet along an approved roadway profile (ref. Road Variance L04V0054), together with a transition to the existing paved width at a point at/near the southeast corner of Parcel 739040-0082 (12901 76th Avenue South). This widening shall be striped as a southbound right turn lane.
- B. Road "A" shall be improved to the Subcollector Street (Urban) standard, 28 feet of paving and concrete curbs, gutters and sidewalks on both sides of the street.
- C. Road "B" shall be improved to the Minor Access Street (urban) standard, 22 feet of paving and concrete curbs, gutters, and sidewalk on one side of the roadway.
- D. Tract "E" (identified as "Minor Access E" on the plat map) shall be constructed per the approval for L04V0054.
- E. Tracts C, D, and F shall be improved to the private access tract street standard per Section 2.09 of the KCRS and as modified by the approval of Road Variance L04V0054. Notes regarding the ownership and maintenance of these tracts shall be placed on the engineering plans and final plat.
- F. No lots abutting South Langston Road or 76<sup>th</sup> Avenue South or the plat entrance road between Langston Road and Road "B", shall have direct access to those roadways. A note to that effect shall be placed on the recorded sir plan..
- G. The applicant shall dedicate 28 feet of right of way along the 76<sup>th</sup> Avenue South frontage of the subdivision for widening and reconstruction of 76<sup>th</sup> Avenue South, together with a 25-foot radius at the 76<sup>th</sup> Avenue South/South Langston Road intersection.
- H. Modifications to the above road conditions may be considered according to the variance procedures in Section 1.08 of the KCRS.



- I. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
- J. Lots 42 and 43 shall have undivided ownership of the Joint Used Driveway Tract (JUDT) and be responsible for its maintenance. The JUDT shall be (20) feet wide and improved with an 18-foot-wide, paved surface and controlled drainage. A note to this effect shall be placed on the engineering plans and final plat.
- K. In order to provide safe walking conditions for school-age residents of the Tuscany Ridge subdivision who will walk to the Dimmit Middle School, the Applicant shall widen (1) the north side of S. Langston Road from 78<sup>th</sup> Avenue South to the intersection of South 130<sup>th</sup> Street, and (2) South 130<sup>th</sup> Street (on the north side of the road) to a point approximately 50 feet east of the “STOP” bar/limit line at its intersection with S. Langston Road. This widening shall include any necessary re-grading of the shoulder, and relocation/tight lining of any open ditches.

This required widening shall incorporate any one of, or combination of, the following improvement standards:

- i. A full width (minimum 8 feet) paved shoulder, with appropriate edgeline channelization, or
    - ii. A minimum five (5) foot wide raised, paved walkway, or
    - iii. A minimum five (5) foot wide at-grade paved walkway, separated from westbound vehicular traffic by a extruded curb
  - L. The project shall comply with all conditions of the road variance approval (KC File L04V0051, dated May 12, 2005).
10. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
11. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. At this time, Renton School District has not adopted a fee schedule. As a condition of final approval, fifty percent (50%) of the impact fees due (if available at the time of recording) for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance. If the fee amount is not available at the time of recording, then the entire fee shall be required at the time of building permit issuance. A note to this effect shall be placed on the recorded plat.
12. Planter islands (if any) within the cul-de-sacs shall be maintained by the abutting lot owners or homeowners association. This shall be stated on the face of the final plat.

13. The proposed subdivision shall comply with the Sensitive Areas Code as outlined in KCC 21A.24. Permanent survey marking, and signs as specified in KCC 21A.24.160 shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed. Preliminary plat review has identified the following specific requirements which apply to this project. All other applicable requirements from KCC 21A.24 shall also be addressed by the applicant.
- A. Steep Slope Areas- There are slopes of 40% or greater that exist along the north portion of the site. The toe of these 40% slopes shall be field surveyed and shown on all engineering plans and the recorded plat. As approved a 10-foot buffer shall be maintained from the toe of the 40% slope. A 15-foot wide Building Setback Line (BSBL) from the toe of the slope shall also be shown on all plans.
  - B. The placement of all structural fill, rockeries, retaining walls, reinforced fill, piles and subsurface drains to intercept groundwater shall be approved and monitored by a registered geotechnical engineer or licensed engineering geologist.
  - C. The suitability of bearing soils after excavation and prior to placement of structural fill, retaining walls, rockeries or footings shall be inspected and approved by a registered engineer or licensed engineering geologist.
  - D. Proper fill placement and compaction with field and laboratory density testing shall be verified and approved by a registered engineer or licensed engineering geologist.
  - E. Fill placed on any slope exceeding 25 percent shall be properly keyed and benched into the slope and shall be verified by a registered engineer or licensed engineering geologist.
  - F. The stability of any permanent cut slopes must be verified and be approved by a registered engineer or licensed engineering geologist.
  - G. The following note shall be shown on the final engineering plan and recorded plat:

**RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE  
AREAS AND BUFFERS**

Dedication of a sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

14. Two recreation tracts as shown on the site plan dated May 11, 2005. The tracts as proposed meet the requirements of KCC 21A.14.180 and KCC 21A.14.190 (i.e., sport court[s], children's play equipment, picnic table[s], benches, etc.).
  - A. An overall conceptual recreation space plan shall be submitted for review and approval by DDES, with the submittal of the engineering plans. This plan shall include location, area calculations, dimensions, and general improvements. The approved engineering plans shall be consistent with the overall conceptual plan.
  - B. A detailed recreation space plan (i.e., landscape specs, equipment specs, etc.) consistent with the overall conceptual plan, as detailed in item a., shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of the final plat documents.
  - C. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
15. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation and/or open space area(s).
16. Street trees shall be provided as follows:
  - A. Trees shall be planted at a rate of one tree for every 40 feet of frontage along South Langston Road, and all interior roads. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
  - B. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
  - C. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
  - D. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the County has adopted a maintenance program. This shall be noted on the face of the final recorded plat.

- E. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
- F. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
- G. The applicant shall contact Metro Service Planning at 684-1622 to determine if South Langston Road is on a bus route. If it is a bus route, the street tree plan shall also be reviewed by Metro.
- H. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.

A landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.

ORDERED this 24th day of June, 2005.

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Peter T. Donahue, Deputy  
King County Hearing Examiner

TRANSMITTED this 24th day of June, 2005, to the following parties and interested persons of record:

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Kevin Oleson Renton School Dist. Trans. 1220 N 4th St. Renton WA 98055	Seattle KC Health Dept. E. Dist. Environ. Health 14350 SE Eastgate Way Bellevue WA 98007	James P. Silvas 12917 - 74th Ave. S. Seattle WA 98178
The West Group. Inc. Attn: David G. West, Jr. 2120 Hewitt Ave., Ste. 103 Everett WA 98201	Albert V. Wicker 12826 - 76th Ave. S. Seattle WA 98178	Peter W. Ziegler 7223 S. Langston Rd. Seattle WA 98178
Kim Claussen DDES/LUSD Current Planning MS OAK-DE-0100	Fereshteh Dehkordi DDES/LUSD Current Planning MS OAK-DE-0100	Lisa Dinsmore DDES/LUSD MS OAK-DE-0100
Nick Gillen DDES/LUSD Site Development Services MS OAK-DE-0100	Kris Langley Traffic Review DDES/LUSD MS OAK-DE-0100	Carol Rogers DDES/LUSD MS OAK-DE-0100
Steve Townsend DDES/LUSD Land Use Inspections MS OAK-DE-0100	Larry West DDES/LUSD Geo Review MS OAK-DE-0100	Bruce Whittaker DDES/LUSD Prel. Review Engineer MS OAK-DE-0100

### NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) ***on or before July 8, 2005***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before July 15, 2005***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3<sup>rd</sup> Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE JUNE 2, 2005, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L03P0031.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Fereshteh Dehkordi, Kristen Langley and Bruce Whittaker, representing the Department; Bob Johns representing the Applicant; and Jon McGlone, Peter Nelson, James P. Silvas, Duane Anderson, Barbara Lansing, David Lyal, Robert P. Johnson, Gayle Jones, Thomas Lewis, Albert Wicker and Craig Bernhart.

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 DDES file no. L03P0031
- Exhibit No. 2 DDES Preliminary Report dated June 2, 2005
- Exhibit No. 3 Application dated December 30, 2003
- Exhibit No. 4 SEPA Checklist received December 30, 2003
- Exhibit No. 5 SEPA Determination of Nonsignificance issued April 29, 2005
- Exhibit No. 6 Affidavit of Posting indicating a posting date of February 26, 2004, received by DDES on March 16, 2004
- Exhibit No. 7 Revised Site Plan received May 11, 2005
- Exhibit No. 8 Conceptual Drainage Plan received May 11, 2005
- Exhibit No. 9 Land Use map - Kroll pages 326W and 327E
- Exhibit No. 10 Assessors maps (2) - NW 13-23-04 and NE 13-23-04
- Exhibit No. 11 Technical Information Report by the Jay Group, Inc. received December 30, 2003
- Exhibit No. 12 Revised Technical Information Report dated June 14, 2004
- Exhibit No. 13 Level One Downstream Analysis dated August 26, 2004
- Exhibit No. 14 Addendum to Level One Downstream Analysis revised October 14, 2004
- Exhibit No. 15 Wetland Reconnaissance Report dated October 3, 2002
- Exhibit No. 16 Geotechnical Report dated June 23, 2003
- Exhibit No. 17 Amended Geotechnical Report dated May 21, 2004
- Exhibit No. 18 Traffic Impact Analysis by Gibson Traffic Consultants dated December 2003
- Exhibit No. 19 Comment letter from the City of Renton dated May 12, 2005
- Exhibit No. 20 Comment Letter from Nelson Financial Group dated March 9, 2004
- Exhibit No. 21 Downstream Drainage map received 5/31/01
- Exhibit No. 22 Document from Jon McGlone on Reasons to Deny Tuscany Ridge dated June 2, 2005
- Exhibit No. 23 Revision to condition 9.A of the DDES Staff Report regarding the frontage of the project
- Exhibit No. 24 Colored GIS map, plot date May 6, 2005